



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB3018

Introduced 1/20/2006, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

720 ILCS 5/11-9.5 new

Amends the Criminal Code of 1961. Creates the offense of sexual misconduct with a person with a disability. Provides that a person commits the offense when: (1) he or she is an employee and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is under the care and custody of the Department of Human Services at a State-operated facility; or (2) he or she is an employee of a community agency funded by the Department of Human Services and knowingly engages in sexual conduct or sexual penetration with a person with a disability who is receiving services from the community agency. Provides that sexual misconduct with a person with a disability is a Class 3 felony. Provides that any person convicted of the offense shall immediately forfeit his or her employment with the State or the community agency. Effective immediately.

LRB094 15525 RLC 50724 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by adding
5 Section 11-9.5 as follows:

6 (720 ILCS 5/11-9.5 new)

7 Sec. 11-9.5. Sexual misconduct with a person with a
8 disability.

9 (a) Definitions. As used in this Section:

10 (1) "Person with a disability" means:

11 (i) a person who suffers from a permanent physical
12 or mental impairment resulting from disease, injury,
13 functional disorder, or congenital condition that
14 impairs the individual's mental or physical ability to
15 independently manage his or her property or financial
16 resources, or both; or

17 (ii) a person diagnosed with a developmental
18 disability as defined in Section 1-106 of the Mental
19 Health and Developmental Disabilities Code; or

20 (iii) a person diagnosed with a mental illness as
21 defined in Section 1-129 of the Mental Health and
22 Developmental Disabilities Code.

23 (2) "State-operated facility" means:

24 (i) a developmental disability facility as defined
25 in the Mental Health and Developmental Disabilities
26 Code; or

27 (ii) a mental health facility as defined in the
28 Mental Health and Developmental Disabilities Code.

29 (3) "Community agency" or "agency" means any community
30 entity or program providing mental health or developmental
31 disabilities services that is licensed, certified, or
32 funded by the Department of Human Services and not licensed

1 or certified by any other human service agency of the State
2 such as the Departments of Public Health, Healthcare and
3 Family Services, and Children and Family Services.

4 (4) "Care and custody" means admission to a
5 State-operated facility.

6 (5) "Employee" means:

7 (i) any person employed by the Illinois Department
8 of Human Services;

9 (ii) any person employed by a community agency
10 providing services at the direction of the owner or
11 operator of the agency on or off site; or

12 (iii) any person who is a contractual employee or
13 contractual agent of the Department of Human Services
14 or the community agency. This includes but is not
15 limited to payroll personnel, contractors,
16 subcontractors, and volunteers.

17 (6) "Sexual conduct" or "sexual penetration" means any
18 act of sexual conduct or sexual penetration as defined in
19 Section 12-12 of this Code.

20 (b) A person commits the offense of sexual misconduct with
21 a person with a disability when:

22 (1) he or she is an employee and knowingly engages in
23 sexual conduct or sexual penetration with a person with a
24 disability who is under the care and custody of the
25 Department of Human Services at a state-operated facility;
26 or

27 (2) he or she is an employee of a community agency
28 funded by the Department of Human Services and knowingly
29 engages in sexual conduct or sexual penetration with a
30 person with a disability who is receiving services from the
31 community agency.

32 (c) For purposes of this Section, the consent of a person
33 with a disability in custody of the Department of Human
34 Services residing at a State-operated facility or receiving
35 services from a community agency shall not be a defense to a
36 prosecution under this Section. A person is deemed incapable of

1 consent, for purposes of this Section, when he or she is a
2 person with a disability and is receiving services at a
3 State-operated facility or is a person with a disability who is
4 receiving services from a community agency funded by the
5 Department of Human Services.

6 (d) This Section does not apply to:

7 (1) any State employee or any community agency employee
8 who is lawfully married to person with a disability in
9 custody of the Department of Human Services or receiving
10 services from a community agency if the marriage occurred
11 before the date of custody or the initiation of services at
12 a community agency; or

13 (2) any State employee or community agency employee who
14 has no knowledge, and would have no reason to believe, that
15 the person with whom he or she engaged in sexual misconduct
16 was a person with a disability in custody of the Department
17 of Human Services or was receiving services from a
18 community agency.

19 (e) Sentence. Sexual misconduct with a person with a
20 disability is a Class 3 felony.

21 (f) Any person convicted of violating this Section shall
22 immediately forfeit his or her employment with the State or the
23 community agency.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.